

**DIPLOMATIC CONFERENCE FOR
THE ADOPTION OF A CONVENTION
ON CLUSTER MUNITIONS**

CCM/32

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Proposal by France and Germany for the amendment of Article 4

Article 4

Clearance, removal and destruction of explosive remnants of cluster munitions (ERCM)¹

1.² **Each State party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all explosive remnants of cluster munitions in territory under its control. In cases where a user of cluster munitions which have become explosive remnants of cluster munitions, does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, inter alia, technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including inter alia through the United Nations system or other relevant organizations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of cluster munitions.**

2. Each State Party undertakes to **Option I (Wellington text unchanged):** clear and destroy, or ensure the clearance and destruction of / **Option 2³: mark and clear, remove or destroy/ Explosive** Remnants **of** Cluster Munitions located in areas under its control, as follows:

a) ⁴Where, after entry into force of this Convention for that State Party, cluster munitions **used during an armed conflict**⁵ have become **explosive remnants of** cluster munitions located in areas under its jurisdiction **or/** control, such clearance, **removal or** ~~and~~ destruction must be completed as soon as possible but no later than **[x] years after cessation of active hostilities**⁶ ~~after such cluster munitions became cluster munitions remnants.~~

b) Where **explosive** remnants **of** cluster munitions are located in areas under its [jurisdiction or] control at the date of entry into force of this Convention for that State Party, ~~such clearance and destruction shall be completed as soon as possible but no later than 5 years from that date~~

¹ It is proposed to change the title in accordance with a methodology more consistent with Protocol V

² It is proposed to add this paragraph, based on Article 3(1) of CCW Protocol V, with the understanding that, as with Protocol V, it only applies to future ERCM. It clearly spells out the responsibilities of States (affected and users) and, while referring to "all" explosive remnants of cluster munitions (ERCM) it does not link this reference directly and specifically to clearance obligations. The term "Explosive Remnants of Cluster Munitions", which should include both "unexploded sub-munitions" and "abandoned explosive cluster munitions", will have to be defined in Article 2 of the Draft Convention (see CCM/22).

³ Option 2 is based on Protocol V, Article 3

⁴ Reversing the order of the two sub-paragraphs is suggested: it seems more logical to start with the situation which will be given a clear priority, i.e. future ERCM, and not existing ones.

⁵ This is meant to clarify the fact that clearance of cluster munitions used e.g. for training will be out of the scope of this Convention

⁶ It is proposed that the time line for counting down the time limit be the same as in Protocol V, Article 3.

provisions of Paragraph/Article [x]⁷ shall apply to the clearance, removal or destruction of such explosive remnants of cluster munitions⁸;

3. In fulfilling the obligations set out in paragraph 1 **2a**), each State Party shall as soon as possible take the following measures, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:

a) Survey and assess the threat posed by **explosive** remnants **of** cluster munitions;

b) Assess and prioritise needs and practicability in terms of marking, protection of civilians and clearance, **removal or** ~~and~~ destruction, take steps to mobilise resources and develop a national plan to carry out these activities;

c) Ensure that ~~all~~ **explosive** remnants **of** cluster munitions located in areas under its [jurisdiction on] control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians. The marking shall at least be to the standards set out in the Protocol on **Explosive Remnants of War (Technical Annex)** ~~Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;~~

d) Clear, **remove or** ~~and~~ **destroy** ~~all~~ **explosive** remnants **of** cluster munitions located in areas under its **[jurisdiction or]** control; and

e) Conduct risk education to ensure awareness among civilians living in or around areas in which **explosive** remnants **of** cluster munitions are located of the risks posed by such remnants.

4. In conducting the above activities each State Party shall take into account international standards, including the International Mine Action Standards.

~~(cf. CCM/47) 4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for it and have become cluster munition remnants located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter. In such cases, upon entry into force of this Convention for both States Parties, the former State Party shall provide, inter alia, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the UN system or other relevant organisations, to facilitate the marking, clearance and destruction of such cluster munition remnants. Such assistance shall include information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.~~

⁷ See CCM/47

⁸ Reference proposed to an additional paragraph/article, which should be mainly based on Article 7 of Protocol V applicable to existing ERW and would exclude retrospective obligations.

5. If a State Party believes that it will be unable to clear, ~~remove or~~ **remove or** ~~and~~ destroy or ensure the clearance, ~~removal or~~ **removal or** ~~and~~ destruction of all **explosive** remnants **of** cluster munitions referred to in paragraph **2a)** of this Article, within that time period, it may submit a request to a Meeting of the States Parties, or a Review Conference, for an extension of the deadline for completing the clearance, ~~removal or~~ **removal or** ~~and~~ destruction of such **explosive** remnants **of** cluster munitions, for a period of up to [x] years.

6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph ~~4~~ **2a)** of this Article for that State Party. Each request shall contain:

- a) The duration of the proposed extension;
- b) A detailed explanation of the reasons for the proposed extension, including:
 - (i) The preparation and status of work conducted under national clearance ~~and demining~~ programmes;
 - (ii) The financial and technical means available to, and required by, the State Party for the clearance, ~~removal or~~ **removal or** ~~and~~ destruction of all **explosive** remnants **of** cluster munitions; and
 - (iii) Circumstances that impede the ability of the State Party to ~~clear, remove or~~ **clear, remove or** ~~destroy all~~ **destroy all** **explosive** remnants **of** cluster munitions located in areas under its ~~jurisdiction~~ **[jurisdiction or]** control;
- c) The humanitarian, social, economic, and environmental implications of the extension; and
- d) Any other information relevant to the request for the proposed extension.

7. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 6 of this Article, assess the request and decide by a majority of States Parties present and voting whether to grant the request for an extension period.

8. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.